

**STANDARD AGREEMENT
BETWEEN
OWNER AND ENGINEER
FOR PROFESSIONAL SERVICES**

COPY

This AGREEMENT made and entered into this 13th day of June, 2006.

by and between the OWNER,

Floyd County Board of Commissioners

City-County Building, Room 214

311 W. First Street

New Albany, Indiana 47150

and the ENGINEER,

Fuller, Mossbarger, Scott and May Engineers, Inc.

350 Missouri Avenue, Suite 101

Jeffersonville, Indiana 47130-3078

PROJECT DESCRIPTION AND PURPOSE

The OWNER retains the ENGINEER to perform professional services in connection with Creation of Digital Address Layer (PROJECT).

Contemporaneous with the execution of this AGREEMENT, the ENGINEER and the OWNER each designates the following individuals as their representatives with respect to the services to be performed or furnished by the ENGINEER and responsibilities of the OWNER under this AGREEMENT. Such individuals shall have authority to transmit instructions, receive information, and render decisions relative to the PROJECT on behalf of their respective party.

Designated Representatives are:

For the OWNER

Name: Gordon Martin

Title: Floyd County Engineer

Phone Number (812) 948-5491

Facsimile Number: (812) 948-4744

E-Mail Address: _____

For the ENGINEER

Name: Matthew D. Wagoner

Title: GIS Manager

Phone Number: (502) 212-5000

Facsimile Number: (502) 212-5055

E-Mail Address: mwagoner@fmsm.com

The OWNER and the ENGINEER, for the consideration of the terms, conditions and covenants herein set forth and other valuable considerations further agree:

SECTION 1 - ENGINEER'S SERVICES AND OWNER'S RESPONSIBILITIES

- 1.1. Scope of Services. The ENGINEER shall provide the services set forth in Appendix A.1. – "Scope of Services, Responsibilities, Time, Budget and Related Matters" (SERVICES).
- 1.2. Commencement of Services. Upon this AGREEMENT becoming effective, the ENGINEER is authorized to begin the SERVICES identified in Appendix A.1.
- 1.3. Changes in the Scope of Services. The OWNER may, by written order, make changes within the general scope of the AGREEMENT or SERVICES to be performed that are mutually acceptable to both parties. Equitable adjustments in the ENGINEER'S costs and or schedule shall be made accordingly, and this AGREEMENT shall be amended. The costs of such changes shall be negotiated in a manner consistent with the ENGINEER'S original agreement with the OWNER.
- 1.4. The OWNER shall have the responsibilities set forth herein and in Appendix A.1.

SECTION 2 - TIMES FOR RENDERING SERVICES

- 2.1. Time Period. The ENGINEER'S SERVICES will be performed within the time period or by the date stated in Appendix A.1.
- 2.2. Delay or Suspension of Services. If the ENGINEER'S SERVICES are delayed or suspended in whole or in part by the OWNER, then the ENGINEER shall be entitled to equitable adjustment of the time for performance and rates and amounts of compensation provided for elsewhere in this AGREEMENT to reflect reasonable costs incurred by the ENGINEER in connection with, among other things, such delay or suspension and reactivation and the fact that the time for performance under this AGREEMENT has been revised.

SECTION 3 - COMPENSATION AND PAYMENT TO THE ENGINEER

- 3.1. Basis of Payment. The OWNER shall pay the ENGINEER for SERVICES rendered under this AGREEMENT a Lump Sum amount of \$74,895.00. Appropriate amounts are incorporated in the Lump Sum to account for labor, overhead, profit, Reimbursable Expenses, and the ENGINEER'S Consultants' charges, if any.
- 3.2. Invoicing. The portion of the Lump Sum amount billed for the ENGINEER'S SERVICES will be based upon the ENGINEER'S estimate of the proportion of the total services actually completed during the billing period to the Lump Sum. Invoices will be prepared in accordance with the ENGINEER'S standard invoicing practices and will be submitted to the OWNER by the ENGINEER monthly, unless otherwise agreed.
- 3.3. Supporting Documentation. If supporting documentation is required, the OWNER shall submit in writing a list identifying the required items. Costs incurred by the ENGINEER will be charged at the standard unit rates and will be submitted on the invoice as "Extra Charges."
- 3.4. Payments. Invoices are due and payable within thirty (30) calendar days of receipt. If the OWNER fails to make any payment due the ENGINEER for SERVICES and expenses within thirty (30) calendar days after receipt of the ENGINEER'S invoice therefore, the amounts due the ENGINEER will be increased at the rate of 1.0% per month (or the maximum rate of interest permitted by law, if less) from said thirtieth day. In addition, the ENGINEER may, after giving seven (7) calendar days written notice to the OWNER, suspend SERVICES under this AGREEMENT until the ENGINEER has been paid in full all amounts due for SERVICES, expenses, and other related charges. Payments will be credited to interest first and then to principal. Upon payment in full by the OWNER, the ENGINEER shall resume services under this AGREEMENT, and the time schedule and compensation shall be equitably adjusted to compensate for the period of suspension plus any other reasonable time and expenses for the ENGINEER to resume performance.

SECTION 4 - OTHER PROVISIONS CONCERNING PAYMENT

- 4.1. Adjusting Costs as a Result of Increased Time to Complete Services. The ENGINEER'S compensation is conditioned on time to complete the SERVICES not exceeding the time identified in Appendix A.1. Should the time to complete the SERVICES be extended beyond this period due to reasons not the fault of and beyond the control of the ENGINEER, the total compensation to the ENGINEER shall be appropriately adjusted.
- 4.2. Annual Compensation Adjustments. The Standard Hourly Rates Schedule and Reimbursable Expenses Schedule will be increased five (5) percent annually on the anniversary date of this AGREEMENT to reflect equitable changes to the compensation payable to the ENGINEER.

4.3. Reimbursable Expenses. Reimbursable Expenses means the actual expenses incurred by the ENGINEER or the ENGINEER'S Consultants directly in connection with the SERVICES.

4.4. Additional Compensation. The OWNER shall pay the ENGINEER for all SERVICES not included in the scope of this AGREEMENT on the basis agreed to in writing by the parties at the time such SERVICES are authorized by the OWNER.

4.5. Disputes or Contested Items. In the event of a disputed or contested billing, only that portion so contested may be withheld from payment, and the undisputed portion will be paid. No interest will accrue on any contested portion of the billing until mutually resolved. OWNER will exercise reasonableness in contesting any billing or portion thereof.

SECTION 5 - STANDARD TERMS AND CONDITIONS

5.1. Standard of Care. The standard of care for all professional and related SERVICES performed or furnished by the ENGINEER under this AGREEMENT will be the care and skill ordinarily used by members of the ENGINEER'S profession practicing under similar circumstances at the same time and in the same locality. The ENGINEER makes no warranties, expressed or implied, under this AGREEMENT or otherwise, in connection with the ENGINEER'S SERVICES.

5.2. Third-Party Beneficiaries. All duties and responsibilities undertaken pursuant to this AGREEMENT will be for the sole and exclusive benefit of the OWNER and the ENGINEER and not for the benefit of any other party. Nothing contained in this AGREEMENT shall create a contractual relationship with or a cause of action in favor of a third party against either the OWNER or the ENGINEER. The ENGINEER'S SERVICES under this AGREEMENT are being performed solely for the OWNER'S benefit, and no other entity shall have any claim against the ENGINEER because of this AGREEMENT or the performance or nonperformance of SERVICES hereunder. The OWNER agrees to include a provision in all contracts with contractors, subconsultants, and other entities involved in this project, to carry out the intent of this paragraph.

5.3. Insurance. The ENGINEER will maintain insurance coverage for Workers' Compensation, General Liability, and Automobile Liability and will provide certificates of insurance to the OWNER upon request.

5.4. Hazardous Environmental Conditions. It is acknowledged by both parties that the ENGINEER'S SERVICES do not include any services related to any "Hazardous Environmental Conditions," i.e. the presence at the site of asbestos, toxic mold, PCBs, petroleum, hazardous waste, or radioactive materials in such quantities or circumstances that may present a substantial danger to persons or property exposed thereto in connection with the PROJECT. In the event the ENGINEER or any other party encounters a Hazardous Environmental Condition, the ENGINEER may, at its option and without liability for consequential or any other damages, suspend performance of SERVICES on the portion of the PROJECT affected thereby until the OWNER: (i) retains appropriate specialist consultant(s) or contractor(s) to identify and, as appropriate, abate, remediate, or remove the Hazardous Environmental Condition(s); and (ii) warrants that the site is in full compliance with applicable laws and regulations. The OWNER acknowledges that the ENGINEER is performing professional services for the OWNER and that the ENGINEER is not and shall not be required to become an "arranger," "operator," "generator," or "transporter" of hazardous substances, as defined in the Comprehensive Environmental Response, Compensation, and Liability Act of 1990 (CERCLA), which are or may be encountered at or near the site in connection with the ENGINEER'S SERVICES under this AGREEMENT. If the ENGINEER'S SERVICES under this AGREEMENT cannot be performed because of a Hazardous Environmental Condition, the existence of the condition shall justify the ENGINEER'S terminating this AGREEMENT for cause under the provisions of Section 5.11. The OWNER will advise the ENGINEER, in writing and prior to the commencement of SERVICES, of all known Hazardous Environmental Conditions present at the site.

5.5. Indemnification and Allocation of Risk.

- a. The ENGINEER shall indemnify and hold harmless the OWNER, the OWNER'S officers, directors, partners, and employees from and against costs, losses, and damages (including reasonable attorney's fees) caused solely by the negligent acts or omissions of the ENGINEER or the ENGINEER'S officers, directors, partners, employees, and consultants in the performance of the ENGINEER'S SERVICES under this AGREEMENT.
- b. The OWNER shall indemnify and hold harmless the ENGINEER, the ENGINEER'S officers, directors, partners, employees, and consultants from and against costs, losses, and damages (including reasonable attorney's fees) caused solely by the negligent acts or omissions of the OWNER or the OWNER'S officers, directors, partners, employees, and consultants with respect to this AGREEMENT.
- c. Each Party's total liability to the other Party and anyone claiming by, through, or under said Party for any injuries, losses, damages and expenses caused in part by the negligence of a Party and in part by the negligence of the other Party or any

other negligent entity or individual, shall not exceed the percentage share that said Party's negligence bears to the total negligence of the OWNER, the ENGINEER, and all other negligent entities and individuals.

- d. In addition to the indemnity provided under paragraph 5.5.b. of this AGREEMENT, the OWNER shall indemnify and hold harmless the ENGINEER and the ENGINEER'S officers, directors, partners, employees, and consultants from and against injuries, losses, damages and expenses (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals, and all court or arbitration or other disputes resolution costs) caused by, arising out of, or resulting from a Hazardous Environmental Condition, provided that (i) any such injuries, losses, damages and expenses are attributable to bodily injury, sickness, disease, or death, or to injury to or destruction of property, including the loss of use resulting there from, and (ii) nothing in this paragraph, 5.5.d., shall obligate the OWNER to indemnify any individual or entity to the extent of that individual's or entity's own negligence or willful misconduct.
- e. It is intended by the parties to this AGREEMENT that the ENGINEER'S SERVICES in connection with the PROJECT shall not subject the ENGINEER'S individual employees, officers, or directors to any personal legal exposure for the risks associated with this PROJECT. Therefore, and notwithstanding anything to the contrary contained herein, the OWNER agrees that as the OWNER'S sole and exclusive remedy, any claim, demand or suit shall be directed and/or asserted only against the ENGINEER, a Kentucky corporation, and not against any of the ENGINEER'S individual employees, officers or directors.
- f. The indemnification provision of paragraph 5.5.a. is subject to and limited by the provisions agreed to by the OWNER and the ENGINEER in paragraph 5.6., "Limit of Liability," of this AGREEMENT.
- g. ENGINEER shall not be liable for damages resulting from a mold infestation and, toward that end, OWNER shall waive any claim against ENGINEER, and shall indemnify, defend, and hold ENGINEER harmless from any claim alleging that ENGINEER'S SERVICES or ENGINEER'S not performing certain services caused or aggravated a mold infestation or did not prevent a mold infestation from coming into being.

5.6. Limit of Liability. The total liability, in the aggregate, of the ENGINEER and the ENGINEER'S officers, directors, partners, employees, agents, and consultants, or any of them to the OWNER and anyone claiming by, through, or under the OWNER, for any and all injuries, losses, damages and expenses, whatsoever arising out of, resulting from, or in any way related to this AGREEMENT from any cause or causes including but not limited to the negligence, professional errors or omissions, strict liability or breach of contract or warranty, expressed or implied, of the ENGINEER or the ENGINEER'S officers, directors, partners, employees, agents, and consultants, or any of them, shall not exceed the total amount of \$25,000. Recoverable damages shall be limited to those that are direct damages and shall not be those that are indirect, consequential, lost profits, punitive, etc. In no event will the ENGINEER be responsible for any cost or expense that provides betterment or upgrades or enhances the value of the Project.

5.7. Accrual of Cause of Action. As to all acts or failures to act by either party to this AGREEMENT, including, but not limited to indemnity claims, any applicable statute of limitations shall commence to run and any alleged cause of action shall be deemed to have accrued in any and all events not later than the relevant date of substantial completion of the work, and as to any acts or failures to act occurring after the relevant date of substantial completion, not later than the date of the issuance of the final certificate of payment or if there is no final certificate of payment, the date the final payment became due.

5.8. Construction/Field Observation. The OWNER recognizes that unanticipated or changed conditions may be encountered during construction and, principally for this reason, shall retain the ENGINEER to observe construction. The OWNER understands that construction observation is conducted to reduce, not eliminate the risk of problems arising during construction, and that provision of the service does not create a warranty or guarantee of any type. In all cases, contractors shall retain responsibility for the quality and completeness of their work and for adhering to the plans, specifications, and recommendations on which their work is based. Should the ENGINEER for any reason not provide construction observation during the implementation of the ENGINEER'S plans, specifications, and recommendations, or should the OWNER unduly restrict the ENGINEER'S assignment of observation personnel, the OWNER shall, to the fullest extent permitted by law, waive any claim against the ENGINEER and indemnify, defend and hold the ENGINEER harmless from any claim or liability for injury or loss arising from field problems allegedly caused by findings, conclusions, recommendations, plans, or specifications developed by the ENGINEER. The OWNER also shall compensate the ENGINEER for any time spent or expenses incurred by the ENGINEER in defense of any such claim. Such compensation shall be based upon the ENGINEER'S prevailing fee schedule and expense reimbursement policy. (The term "any claim" used in this provision means "any claim in contract, tort, or statute alleging negligence, errors, omissions, strict liability, statutory liability, breach of contract, breach of warranty, negligent misrepresentation, or other acts giving rise to liability.")

5.9. Indemnity Claims by the OWNER

- a. Notice of Claim. If any matter shall arise which, in the reasonable opinion of the OWNER, constitutes or may give rise to a Loss subject to indemnification by the ENGINEER as provided herein (an "Indemnity Claim"), the OWNER shall give prompt written notice (a "Notice of Claim") of such Indemnity Claim to the ENGINEER, setting forth the relevant facts and circumstances of such Indemnity Claim in reasonable detail and the amount of indemnity sought from the ENGINEER with respect thereto, and shall give continuing notice promptly thereafter as to developments coming to the OWNER'S attention materially affecting any matter relating to such Indemnity Claim.
- b. Third Party Claims. If any Indemnity Claim is based upon any claim, demand, suit or action of any third party against the OWNER (a "Third Party Claim"), then the OWNER, at the time it gives the ENGINEER the Notice of Claim with respect to such Third Party Claim, shall either (at the OWNER'S option):
 - (i) Offer to the ENGINEER the option to have the ENGINEER assume the defense of such Third Party Claim, which option shall be exercised by the ENGINEER (if the ENGINEER elects to exercise) by written notice to the OWNER within fifteen (15) days after the OWNER gives written notice to the ENGINEER thereof. If the OWNER so offers such option and the ENGINEER so exercises such option, then the ENGINEER shall, at its own expense, assume the defense of such Third Party Claim, shall upon the final determination thereof fully discharge at its own expense all liability of the OWNER with respect to such Third Party Claim, and shall be entitled, in its sole discretion and its sole expense, but without any liability of the OWNER therefore, to compromise or settle such Third Party Claim upon terms acceptable to the ENGINEER. From the time the ENGINEER so assumes such defense and while such defense is pursued diligently and in good faith, the ENGINEER shall have no further liability for attorneys' fees or other costs of defense thereafter incurred by the OWNER in connection with such Third Party Claim; or
 - (ii) Undertake to defend such Third Party Claim itself. If the OWNER so undertakes the defense of the Third Party Claim, it shall conduct such defense as would a reasonable and prudent person to whom no indemnity were available, shall permit the ENGINEER (at the ENGINEER'S sole expense) to participate in (but not control) such defense, and shall not settle or compromise such Third Party Claim without the ENGINEER'S consent (but such consent shall not of itself establish the ENGINEER'S indemnity liability therefore).

If the OWNER fails to offer to the ENGINEER the option to assume the defense as provided in clause (i) above, the OWNER shall undertake such defense in accordance with this clause at the OWNER'S sole expense. If the OWNER offers the option to the ENGINEER to assume the defense as provided for in clause (i) above, and the ENGINEER does not exercise such option within the time and in the manner therein provided, then the OWNER shall undertake such defense in accordance with this clause at the expense of the ENGINEER.

5.10. Dispute Resolution.

5.10.1. If a dispute arises between the parties relating to this AGREEMENT, the parties agree to use the following procedure prior to either party pursuing other available remedies;

- a. A meeting shall be held promptly between the parties, attended by individuals with decision-making authority regarding the dispute, to attempt in good faith to negotiate a resolution to the dispute.
- b. If, within twenty (20) calendar days after such meeting, the parties have not succeeded in negotiating a resolution of the dispute, they will jointly appoint a mutually acceptable neutral person not affiliated with either of the parties (the "Neutral") to act as mediator. If the parties are unable to agree on the Neutral within twenty (20) calendar days, they shall seek assistance in such regard from the Central Kentucky Mediation Center, Lexington, Kentucky ("CKMC"). The parties shall share the fees of the Neutral and all other common fees and expenses equally.
- c. The mediation may proceed in accordance with CKMC's Model Procedure for Mediation of Business Disputes, or the parties may mutually establish their own procedure.
- d. The parties shall pursue mediation in good faith and in a timely manner. In the event the mediation does not result in resolution of the dispute within thirty (30) calendar days, then, upon seven (7) calendar days' written notice to the other party either party may suggest another form of alternative dispute resolution ("ADR"), e.g., arbitration, a mini-trial or a summary jury trial, or may pursue other available remedies.

5.10.2. All ADR proceedings shall be strictly confidential and used solely for the purposes of settlement. Any materials prepared by one party for the ADR proceedings shall not be used as evidence by the other party in any subsequent litigation; provided however, the underlying facts supporting such materials may be subject to discovery.

5.10.3. Each party fully understands its specific obligations under the ADR provisions of this AGREEMENT. Neither party considers such obligations to be vague or in any way unenforceable, and neither party will contend to the contrary at any future time or in any future proceedings.

5.10.4. The OWNER and the ENGINEER further agree to include a similar mediation provision in all agreements with any and all additional independent subconsultants and contractors retained for the PROJECT and to require all such parties to include a similar mediation provision as the primary method for dispute resolution between those parties and their independent subconsultants and contractors.

5.10.5. The ENGINEER shall be entitled to interest at the rate of 12% per annum on any amount awarded to the ENGINEER in arbitration or litigation, irrespective of whether the sum is liquidated, the parties agreeing that the award of interest in such event is fair and reasonable.

5.11. Termination of Contract. Either party may terminate this AGREEMENT for convenience and without cause upon giving the other party not less than seven (7) calendar days' written notice.

Either party may terminate this AGREEMENT for cause giving the other party not less than seven (7) calendar days' written notice for any of the following reasons:

- a. Substantial failure by the other party to perform in accordance with the terms of this AGREEMENT and through no fault of the terminating party;
- b. Assignment of this AGREEMENT or transfer of SERVICES by either party to any other entity without the prior written consent of the other party;
- c. Suspension of the PROJECT or the ENGINEER'S SERVICES by the OWNER for more than ninety (90) calendar days, consecutive or in the aggregate;
- d. Material changes in the conditions under which this AGREEMENT was entered into, the Scope of Services or the nature of the PROJECT, and the failure of the parties to reach agreement on the compensation and schedule adjustments necessitated by such changes.

In the event of termination of this AGREEMENT by either party, the OWNER shall within fifteen (15) calendar days of termination pay the ENGINEER for all SERVICES rendered and all reimbursable costs incurred by the ENGINEER up to the date of termination, in accordance with the payment provisions of this AGREEMENT.

In the event of any termination that is not the fault of the ENGINEER, the OWNER shall pay the ENGINEER, in addition to payment for SERVICES rendered and reimbursable costs incurred, for all expenses reasonably incurred by the ENGINEER in connection with the orderly termination of this AGREEMENT, including but not limited to demobilization, reassignment of personnel, associated overhead costs and all other expenses directly resulting from the termination.

5.12. Access. The OWNER shall arrange for safe access to and make all provisions for the ENGINEER and the ENGINEER'S Consultants to enter upon public and private property as required for the ENGINEER to perform SERVICES under this AGREEMENT.

5.13. Patents. The ENGINEER shall not conduct patent searches in connection with its SERVICES under this AGREEMENT and assumes no responsibility for any patent or copyright infringement arising there from. Nothing in this AGREEMENT shall be construed as a warranty or representation that anything made, used, or sold arising out of the SERVICES performed under this AGREEMENT will be free from infringement of patents or copyrights.

5.14. Ownership and Reuse of Documents. All documents prepared or furnished by the ENGINEER pursuant to this AGREEMENT are instruments of service, and the ENGINEER shall retain an ownership and property interest therein. Reuse of any such documents by the OWNER shall be at the OWNER'S sole risk; and the OWNER agrees to indemnify, and hold the ENGINEER harmless from all claims, damages, and expenses including attorney's fees arising out of such reuse of documents by the OWNER or by others acting through the OWNER.

5.15. Copyrighted Information. The OWNER agrees that all hard copy and/or digital data provided to the OWNER by the ENGINEER is copyrighted, and is furnished to the OWNER with all rights reserved. The OWNER is hereby expressly permitted to use the data for the purposes required to complete the scope of this AGREEMENT. The OWNER further agrees not to otherwise copy, reproduce or use the data for any other purposes whatsoever without the written consent of the ENGINEER.

5.16. Use of Electronic Media.

- a. Copies of documents that may be relied upon by the OWNER are limited to the printed, or hard copies that are signed or sealed by the ENGINEER. Files in electronic media format of text, data, graphics, or of other types that are furnished by the ENGINEER to the OWNER are only for convenience of the OWNER. Any conclusion or information obtained or derived from such electronic files will be at the user's sole risk.
- b. When transferring documents in electronic media format, the ENGINEER makes no representations as to long-term compatibility, usability, or readability of documents resulting from the use of software application packages, operating systems, or computer hardware differing from those used by the ENGINEER at the beginning of this PROJECT.
- c. If there is a discrepancy between the electronic files and the hard copies, the hard copies govern.
- d. Because data stored in electronic media format can deteriorate or be modified inadvertently or otherwise without authorization of the data's creator, the party receiving electronic files agrees that it will perform acceptance tests or procedures within sixty (60) calendar days, after which the receiving party shall be deemed to have accepted the data thus transferred. The party delivering the electronic files will correct any errors detected within the sixty (60) calendar day acceptance period. The ENGINEER shall not be responsible to maintain documents stored in electronic media format after acceptance by the OWNER.

5.17. Opinions of Probable Construction Cost.

- a. Construction Cost is the cost to the OWNER to construct proposed facilities. Construction Cost does not include costs of SERVICES of the ENGINEER or other design professionals and consultants, cost of land, rights-of-way, or compensation for damages to properties, or the OWNER'S costs for legal, accounting, insurance counseling or auditing services, or interest and financing charges incurred in connection with the OWNER'S contemplated project, or the cost of other services to be provided by others to the OWNER pursuant to this AGREEMENT. Construction Cost is one of the items comprising Total Project Costs.
- b. The ENGINEER'S opinions of probable Construction Cost provided for herein are to be made on the basis of the ENGINEER'S experience and qualifications and represent the ENGINEER'S best judgment as an experienced and qualified professional generally familiar with the industry. However, since the ENGINEER has no control over the cost of labor, materials, equipment, or services furnished by others, or over the Contractor's methods of determining prices, or over competitive bidding or market conditions, the ENGINEER cannot and does not guarantee that proposals, bids, or actual Construction Cost will not vary from Opinions of Probable Construction Cost prepared by the ENGINEER. If the OWNER wishes greater assurance as to Probable Construction Cost, the OWNER shall employ an independent cost estimator.

5.18. Opinions of Total Project Costs.

- a. Total Project Costs are the sum of the Probable Construction Cost, allowances for contingencies, the estimated total costs of services of the ENGINEER or other design professionals and consultants, cost of land, rights-of-way, or compensation for damages to properties, and the OWNER'S costs for legal, accounting, insurance counseling or auditing services, and interest and financing charges incurred in connection with a proposed project, and the cost of other services to be provided by others to the OWNER pursuant to this AGREEMENT.
- b. The ENGINEER assumes no responsibility for the accuracy of opinions of Total Project Costs.

5.19. Force Majeure. The ENGINEER shall not be liable for any loss or damage due to failure or delay in rendering any SERVICES called for under this AGREEMENT resulting from any cause beyond the ENGINEER'S reasonable control.

5.20. Assignment. Neither party shall assign its rights, interests or obligations under this AGREEMENT without the express written consent of the other party.

5.21. Binding Effect. Except for the non-assignability of this AGREEMENT as provided herein, it shall bind, and the benefits thereof shall inure to the respective parties hereto, their legal representatives, executors, administrators, successors, and assigns.

5.22. Severability and Waiver of Provisions. Any provision or part of the AGREEMENT held to be void or unenforceable under any laws or regulations shall be deemed stricken, and all remaining provisions shall continue to be valid and binding upon the OWNER and the ENGINEER, who agree that the AGREEMENT shall be reformed to replace such stricken provision or part thereof with a valid and enforceable provision that comes as close as possible to expressing the intention of the stricken provision. Non-enforcement of any provision by either party shall not constitute a waiver of that provision, nor shall it affect the enforceability of that provision or of the remainder of this AGREEMENT.

5.23. Survival. All express representations, indemnifications, or limitations of liability included in this AGREEMENT will survive its completion or termination for any reason.

5.24. Subject Headings. The subject headings of the Sections and Subsections of this AGREEMENT are included for convenience only and shall not affect the construction or interpretation of its provisions.

5.25. Prevailing Law. This AGREEMENT is to be governed by the laws of the state in which the ENGINEER'S office executing this AGREEMENT is located.

5.26. Notices. Any notice required under this AGREEMENT will be in writing, addressed to the appropriate party at its address on page one (1) and given personally, or by registered or certified mail postage prepaid, or by a commercial courier service. All notices shall be effective upon the date of receipt.

SECTION 6 – ENTIRE AGREEMENT

6.1. The following Appendices are incorporated herein by reference:

- a. Appendix A.1, "Scope of Services, Responsibilities, Time, Budget and Related Matters," consisting of 4 pages. This Appendix may be amended by A.2, A.3, A.4 etc., with written approval by the ENGINEER and the OWNER.

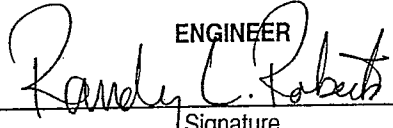
6.2. This AGREEMENT (consisting of pages 1 to 8, inclusive, together with the Appendices identified in Section 6) constitutes the entire AGREEMENT between the OWNER and the ENGINEER and supersedes all prior written or oral understandings with respect to the ENGINEER'S SERVICES herein described. This AGREEMENT may not be altered, modified or amended, except in writing properly executed by authorized representatives of the OWNER and the ENGINEER.

IN WITNESS WHEREOF, the Parties have signed this AGREEMENT the date and year set forth above.

OWNER

Signature

Chuck Freiberger, President
Floyd County Board of Commissioners
Printed Name and Title

ENGINEER

Signature

Randy L. Roberts, PE, Associate
Fuller, Mossbarger, Scott and May Engineers, Inc.
Printed Name and Title

COPY

Appendix A.1

Scope of Services, Responsibilities, Time, Budget and Related Matters

COPY

This is APPENDIX A.1 consisting of 4 pages, referred to in and part of the AGREEMENT between the OWNER and the ENGINEER for Professional Services dated June 13, 2006.

Initial:

OWNER

cf

ENGINEER

RUR

SECTION A.1.1. ENGINEER'S SCOPE OF SERVICES

Introduction

The primary purpose of this project is to create a digital address layer for Floyd County through the use of Parcel Data. This digital layer will provide a spatial location for each address within Floyd County (excluding the City of New Albany) and be used in conjunction with the County's dispatch system. Leveraging the parcel data to create an address layer will allow multiple departments within County Government to collaborate on an enterprise Geographic Information System (GIS). The interested departments currently include E-911, Sheriff, Engineer, Auditor, Assessor, Surveyor, Planning and Zoning, and Treasurer.

Scope

The ENGINEER's personnel will create a digital parcel layer for the OWNER and then develop a digital address layer to be used in conjunction with the dispatch system for emergency vehicles and resources. Other layers such as Geocoded street centerlines, County boundary, and dispatch zones will be created to be used as reference within the mapping system.

Tasks

The following sections describe the specific tasks associated with this project. Each task description identifies the subtasks, deliverables, and various assumptions used during the creation of this Scope.

- Task 1 – Outline Process and Obtain Data
- Task 2 – Develop Digital Parcel Layer
- Task 3 – Develop Digital Address Layer
- Task 4 – Address Verification / Quality Control
- Task 5 – Street Centerline Geo-Coding
- Task 6 – County Boundary and Dispatch Zone Development
- Task 7 – Integration with Dispatch System
- Task 8 – Maintenance Planning

Task 1: Outline Process and Obtain Data

Scope: The ENGINEER will review with OWNER's staff the expected data deliverables, goals and necessary attributes required of the digital address layer. This task is key to ensuring that the ENGINEER and the OWNER are coordinated and that expectations are met. This coordination will formulate the technical process to be used in the following tasks. In addition, the ENGINEER will gather the

Appendix A.1 (Continued)

necessary basemap information that is available to date. It is anticipated that this data will include Kentuckiana Regional Planning and Development Agency (KIPDA) street centerlines (2003) and aerial photography and dispatch zones as available from the OWNER. The ENGINEER will also meet with the Floyd County Auditor and Assessor staff to determine the process for the creation of a digital parcel layer.

Deliverables: The following products will be delivered as a part of this task:

- Documented process to create the digital address layer and integration with Dispatch System

Assumptions: The following conditions were assumed during the scoping process:

- OWNER's representative will be available to meet with the ENGINEER.

Task 2: Develop a Digital Parcel Layer

Scope: The ENGINEER will create a digital parcel layer that is based upon the County tax map books. Currently these books contain hard copy maps of the parcel boundaries for Floyd County. The ENGINEER will first scan the tax map books. Once the scanning process is complete, the ENGINEER will register the tax map images to visible features on the digital orthophotography in order to transform the maps to real world coordinates. Once these images pass a quality review, the ENGINEER's GIS staff will begin digitizing the parcel boundaries to create an individual polygon for each land record. These polygons will then be attributed with the parcel number to create a link to the Auditor and Assessor records that contain ownership information and property address.

Deliverables: The following products will be delivered as a part of this task:

- Digital Parcel layer in shapefile or geodatabase format

Assumptions: The following conditions were assumed during the scoping process:

- Approximately 19,500 parcels will be digitized.
- Workspace will be available on-site to setup a large format scanner and laptop computer.
- Tax Map pages will be legible and of scan quality.

Task 3: Develop Digital Address Layer

Scope: The ENGINEER will create an ESRI format point shapefile based on the parcel centroid created from the digital parcel layer created in Task 2. The ENGINEER will use the property address found in the Assessor's records to populate the point shapefile with house number, road name and suffix.

Deliverables: The following products will be delivered as a part of this task:

- Digital Address layer – point shapefile attributed with address

Assumptions: The following conditions were assumed during the scoping process:

- Points will be placed at the center of the parcel.
- Points will be attributed with address information as found in the Assessor's database records.

Task 4: Address Verification / Quality Control

Scope: The ENGINEER will use the digital layer created in Task 3 and verify the property addresses assigned from the parcel data. At this time the ENGINEER anticipates that the Auditor's data will have some errors which will require cleanup. Discrepancies or structures without an assigned address will be noted and followed up by field visits to confirm the correct address information. At this time an individual point will be placed for each unit in condominiums and apartment complexes as they are identified. Upon completion of this task the ENGINEER will deliver a revised address layer.

Appendix A.1 (Continued)

Deliverables: The following products will be delivered as a part of this task:

- Revised Digital Address layer

Assumptions: The following conditions were assumed during the scoping process:

- The ENGINEER will drive the streets of Floyd County to verify addresses.

Task 5: Street Centerline Geocoding

Scope: The ENGINEER will update the existing street centerline file acquired in Task 1 and produced by KIPDA with new streets and verify address ranges. This centerline file was developed in 2003 and has had a few updates provided by the OWNER; the ENGINEER will leverage this data and incorporate new streets as data is available. In addition, the ENGINEER will verify the existing address ranges and street names with the point addresses developed in Task 3.

Deliverables: The following products will be delivered as a part of this task:

- Revised Centerline file

Assumptions: The following conditions were assumed during the scoping process:

- The ENGINEER will leverage the KIPDA street centerline file, and it is assumed to be 85% complete.
- Centerline file will include starting and ending address ranges, directional prefix, street name, street type and suffix.

Task 6: County Boundary and Dispatch Zone Development

Scope: The ENGINEER will provide to the OWNER a municipal boundary that represents the best available information at this time. In addition, the ENGINEER will coordinate with the Department to create dispatch zones or other areas of interest as needed. These boundaries will be created by working with the OWNER's staff to determine the boundaries.

Deliverables: The following products will be delivered as a part of this task:

- Digital County Boundary
- Digital Dispatch Zone layer

Assumptions: The following conditions were assumed during the scoping process:

- The OWNER's staff will be available to meet with the ENGINEER and discuss boundaries.

Task 7: Integration with Dispatch System

Scope: The ENGINEER will deliver the digital address layer in Spillman Technology data format and provide detailed explanation of techniques, assumptions and guidelines to the E-911 Department. The ENGINEER will install ESRI's ArcGIS software and address data on the dispatch system and perform testing and instruction to users.

Deliverables: The following products will be delivered as a part of this task:

- Finalized Digital Address layer installed on Dispatch System.

Assumptions: The following conditions were assumed during the scoping process:

- County E-911 will purchase ESRI's ArcGIS Software outside of this contract.
- FMSM will be provided access to the dispatch system to install necessary data.

Appendix A.1 (Continued)

- Coordination with Spillman Technologies will be done by the OWNER.
- Fees charged by Spillman Technologies will be separate from this agreement.

Task 8: Maintenance Plan

Scope: Upon completion of creating the digital address layer, the ENGINEER will coordinate with the OWNER's personnel to develop a maintenance plan to keep the address layer up to date. An up to date layer will be key to accurately locating addresses and dispatching emergency personnel and resources. If determined to be a viable option, the ENGINEER can provide data maintenance services if the OWNER elects to do so. Services will be negotiated under a separate scope of services.

Deliverables: The following products will be delivered as a part of this task:

- Documentation of maintenance plan

Assumptions: The following conditions were assumed during the scoping process:

- The ENGINEER may provide data maintenance services if desired and negotiated under a separate contract.

Schedule

This scope is expected to begin approximately two weeks after Notice to Proceed (NTP) and will have a duration of approximately 24 weeks.

Fees

The total cost of services provided under this scope is \$74,895. This lump sum cost reflects the specific level of services identified herein. Professional services beyond those identified herein are subject to negotiation.

Activity	Lump Sum
Task 1 – Outline Process and Obtain Data	\$ 1,000
Task 2 – Develop Digital Parcel Layer	\$51,675
Task 3 – Develop Digital Address Layer	\$ 5,220
Task 4 – Address Verification / Quality Control	\$ 5,000
Task 5 – Street Centerline Geo-Coding	\$ 5,000
Task 6 – County Boundary and Dispatch Zone Development	\$ 1,500
Task 7 – Integration with Dispatch System	\$ 5,000
Task 8 – Maintenance Planning	\$ 500
Total Lump Sum Amount	\$74,895